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PHC-ELKO, Inc. d/b/a Elko General Hospital and Operating Engineers Local Union No. 3, International Union of Operating Engineers, AFL-CIO. Case 32-CA-18036-1

May 23, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN,
AND BRAME

Pursuant to a charge filed on March 21, 2000, the General Counsel of the National Labor Relations Board issued a complaint on March 23, 2000, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 32-RC-4587. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On April 10, 2000, the General Counsel filed a Motion for Summary Judgment. On April 12, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Union filed a joinder in the Motion for Summary Judgment. The Respondent filed an opposition to the Motion for Summary Judgment and a response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information that is alleged to be relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing regarding the Union's request for information.

The complaint alleges, and the Respondent admits, that on about January 12, 2000, the Union requested the following information:

(1) A list of the name, job classification, date of hire, and wage rate for each unit employee.

(2) Copies of the Respondent's personnel management and employee benefit policies and procedures, including a summary plan description and total costs of employee health insurance and pension plans.

It is well established that the foregoing type of compensation and employment information sought by the Union is presumptively relevant for purposes of collective bargaining and must be furnished on request unless its relevance is rebutted.¹ The Respondent has not attempted to rebut the relevance of the information requested by the Union. Instead, in its answer, the Respondent relies solely on its challenge to the Union's certification as the basis for its denial that it has a duty to provide the Union with the requested information. We therefore find that no material issues of fact exist with regard to the Respondent's refusal to furnish the information sought by the Union.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain with the Union and to furnish the Union with the information it requested.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Nevada corporation, has been engaged in the operation of an acute care hospital in Elko, Nevada. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, received gross revenues in excess of \$250,000, and purchased and received goods valued in excess of \$5000, which originated outside the State of Nevada. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.²

¹ See, e.g., *U.S. Family Care San Bernardino*, 315 NLRB 108 (1994); *Trustees of Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

² The Respondent's answer denies par. 4 of the complaint, which alleges that "[t]he Union each is now, and has been at all times material herein, a labor organization within the meaning of Sec. 2(5) of the Act." The Respondent contends that the use of the word "each" in this paragraph constitutes an assertion that Local 3 is a distinct and separate labor organization from the International Union, and the Respondent denies that this is true. The Respondent also argues that this purported "assertion" is contrary to the stipulated election agreement executed by the parties in the underlying representation case. With respect to these contentions, the General Counsel's motion states that the inclusion of the word "each" was "clearly an inadvertent typographical error and of

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held September 8 and 9, 1999, the Union was certified on December 20, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time non-professional employees employed within technical, service, maintenance, laboratory, nursing, business office, and medical records and clinic classifications, employed by Respondent at its Elko, Nevada facilities; excluding all professional employees, temporary employees, confidential and administrative employees, computer service personnel, managers, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since January 12, 2000, the Union has requested the Respondent to bargain and to furnish information, and since about January 19, 2000, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after January 19, 2000, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

no legal significance.” We find that this matter raises no factual issue warranting a hearing. The first sentence of the complaint identifies “Operating Engineers Local Union No. 3, International Union of Operating Engineers, AFL-CIO,” as the Union that is referenced throughout the remainder of the complaint, including in the assertion of labor organization status set forth in par. 4 of the complaint. That Union is the union that is certified and with which the complaint alleges that the Respondent has unlawfully refused to bargain. Further, the Respondent stipulated to the Union’s labor organization status in the underlying representation case, and has offered no facts herein that would put that status in question. Thus, we accept the General Counsel’s representation that the use of the word “each” in par. 4 of the complaint was inadvertent and has no legal significance. The Respondent has failed to show that there is any material factual issue in dispute concerning the identity and labor organization status of the certified Union.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, PHC-ELKO, Inc., d/b/a Elko General Hospital, Elko, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Operating Engineers Local Union No. 3, International Union of Operating Engineers, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time non-professional employees employed within technical, service, maintenance, laboratory, nursing, business office, and medical records and clinic classifications, employed by Respondent at its Elko, Nevada facilities; excluding all professional employees, temporary employees, confidential and administrative employees, computer service personnel, managers, guards, and supervisors as defined in the Act.

(b) Furnish the Union the information requested by it on about January 12, 2000.

(c) Within 14 days after service by the Region, post at its facility in Elko, Nevada, copies of the attached notice marked “Appendix.”³ Copies of the notice, on forms provided by the Regional Director for Region 32 after being signed by the Respondent’s authorized representa-

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

tive, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 19, 2000.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 23, 2000

John C. Truesdale,	Chairman
Wilma B. Liebman,	Member
J. Robert Brame III,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Operating Engineers Local Union No. 3, International Union of Operating Engineers, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time non-professional employees employed within technical, service, maintenance, laboratory, nursing, business office, and medical records and clinic classifications, employed by us at our Elko, Nevada facilities; excluding all professional employees, temporary employees, confidential and administrative employees, computer service personnel, managers, guards, and supervisors as defined in the Act.

WE WILL provide the Union with the information it requested on about January 12, 2000.

PHC-ELKO, INC. D/B/A ELKO GENERAL HOSPITAL